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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Ronald Fredrik Michael Johnson

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06/07/2006

GREENBERG-TRAURIG

1750 TYSONS BOULEVARD, 12TH FLOOR
MCLEAN, VA 22102

EXAMINER

FISCHER, ANDREW J

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/769,294

Applicant(s)

JOHNSON, RONALD FREDRIK
MICHAEL

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-16,18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-16,18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgements

1. Applicant's response filed March 22, 2006 is acknowledged. Accordingly, claims 1-3 and 5-16, 18, and 19 remain pending.
2. This Office Action, the "Third Final Office Action" is given Paper No. 20060410.
3. All references in this Office Action to the capitalized versions of "Applicant" refers specifically the Applicant of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner(s) generally.
4. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologies for these errors.

Claim Rejections - 35 USC §112 1st Paragraph

5. The following is a quotation of the first paragraph of 35 U.S.C. §112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Written Description

6. Claims 1-3 and 5-16, 18, and 19 are rejected under 35 U.S.C. §112, 1st paragraph, as failing to comply with the written description requirement. Claims 1 and 12 contains subject

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matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. In particular, it is the Examiner's factual determination that Applicant has not disclosed where (as *e.g.* recited in claim 1) "the server provides real-time access to at least a subset of the inventory information associated with the selected inventory by pushing the inventory information to the at least one client when the at least a subset of the inventory associated with the particular inventory item changes in the database" Applicants' original specification on page 7 expressly states:

Web Server 220 can update information requested by Browser 200 as such information changes, or "push" said changes to a client. In an alternative embodiment, Browser 200 can provide up-to-date information to a user by periodically request updated information from Web Server 220. This later method may also be referred to as a client "pulling" data from a server.

7. Because 'push' technology does not necessarily require real time information since the information could be "pushed" at regular intervals, it is the Examiner's factual determination that Applicant's original specification does not *necessarily disclose* "the server provides real-time access to at least a subset of the inventory information associated with the selected inventory by pushing the inventory information to the at least one client." While the Examiner admits that this may be 'obvious' in view of Applicant's disclosure, it is nevertheless not *necessarily* present.

8. To support his position and as noted in the Third Non Final Office Action mailed September 22, 2005 (Paper No. 20050915, Paragraph No. 9 on page 4), Applicant's own "Remarks/Arguments" filed July 6, 2005, Page 14, ~ lines 24-26 seem to challenge the

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Examiner's factual determination that 'push/pull' technology was well known in the relevant arts at the time the invention was made.

Enablement

9. Claims 1-3 and 5-16, 18, and 19 are rejected under 35 U.S.C. §112, 1st paragraph, as failing to comply with the enablement requirement. In particular, claims 1 and 12 contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In particular, Applicant has not disclosed how, to one of ordinary skill in the art, the claimed server provides *real-time* information by "pushing the inventory information to the at least one client" If Applicant admits on the record that this feature it is old and well known in the art and provides appropriate evidence of record to support his position, this particular 35 U.S.C. §112, 1st paragraph will be withdrawn.

Claim Rejections - 35 USC §112 2nd Paragraph

10. The following is a quotation of the 2nd paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1-3 and 5-16, 18, and 19 are rejected under 35 U.S.C. §112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with errors. Some examples follow.

a. In claim 1, the phrase "the at least one client can the display inventory information" does not make grammatical sense. "A claim must be read in accordance

with the precepts of English grammar.” *In re Hyatt*, 708 F.2d 712, 714, 218 USPQ 195, 197 (Fed. Cir. 1983). Appropriate correction is required.

b. Also in claim 1, it is unclear if server can push “the inventory information” (*i.e.* all the inventory information) or just the “at least a subset of the inventory information . . .”

c. In claim 12, it is unclear if “a supplier” in line 1 on page 4 is the same or different from “a supplier” as recited in line 7 on page 3. For prior art purposes only, the Examiner will assume that they are different suppliers.

d. Also in claim 12, it is unclear if the “at least one inventory item” in line 5 on page 4 is the includes or is different from “any inventory items received from a supplier”

Claim Rejections - 35 USC §102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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13. Claims 1-3 and 5-16, 18, and 19, as understood by the Examiner, are rejected under 35

U.S.C. §102(e) as being anticipated by Peterson et. al. (U.S. 6,324,522) ("Peterson '522"),

Greene's Production and Inventory Control Handbook, Chopra et. al.' Supply Chain

Management, Strategy, Planning, & Operation, and Gralla's How the Internet Works.

14. While Peterson '522 directly discloses the client as Netscape, Peterson '522 does not

show all the elements of Netscape or all of the functionality of Netscape. Gralla however

teaches using Netscape to push web based content from web servers to clients (Chapter 33, pp

190-197). In particular, Gralla teaches how Netscape is used to push content from a web server

to a client (pg 194-195). It is the Examiner's factual determination that these features in

Netscape as shown in Gralla are inherent in Peterson '522 because Peterson '522 directly

discloses the use of the Netscape browser and Gralla teaches various features of the Netscape

browser. Additionally, Gralla also discloses in Chapter 28 how web host servers work. In

particular, Gralla discloses on pages 168-169 shows how a web client accesses a database.

15. Additionally Peterson '522 does not directly disclose fields in an inventory record. Such fields contain information which is considered basic information for managing the inventory.

Green (pp 18.15 to 18.16) directly teaches storing the inventory information stored in the

database. See Table 18.5 on page 18.16. While keeping track of the inventory in Peterson '522,

Peterson '522 does not disclose how it tracks the inventory transactions. However Green in

Table 18.7 on page 18.17 teaches an inventory transaction table that is inherent in Peterson '522.

In particular, Table 18.7 in Green teaches tracking ordered, on-hand, and recovered (*i.e.*

allocated) inventory. Again it is the Examiner position that these features of Green are inherent

in Peterson '522 because Peterson'522 does not disclose the file structure of the inventory data

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stored. In addition to the above, Green also directly discloses types of inventory attributes that are stored in a typical inventory system. See Green, p 30.23, Table 30.4; and p 30.24, Table 30.5. Chopra is cited in this rejection simply to show features of the inventory system in Peterson '522 that are old and well known in the art such as "safety inventory" (page 180+), replenishment policies on safety inventory (Chapter 8 beginning on page 179 with particular emphasis on pp 207-211), and the role of electronic business in the supply chain (pp 391-318).

16. The Examiner has carefully reviewed the provisional application 60/178,313 filed January 26, 2000 ("Provisional Application"). However because the Examiner can not locate support for all of the claimed subject matter in claims 1 and 12 in the Provisional Application (e.g. "pushing the inventory information to the at least one client" as recited in claim 1), the effective U.S. filing date for claims 1-3 and 5-16, 18, and 19 (as currently amended), is hereby determined to be January 26, 2001.

Claim Rejections - 35 USC §103

17. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 1-3 and 5-16, 18, and 19, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Peterson '522, Green, Chopra, and Gralla. It is the Examiner's principle position that the claims are anticipated because of the

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inencies noted above in Peterson '522 such as tables to store inventory data in a database in a computer

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Peterson '522 as taught by Green to include the data structure as described in Green. Such a modification would have simply disclosed that which is inherent. Moreover, such a modification would have increased inventory accuracy. And it is the Examiner factual determination that increasing accuracy of inventory helps prevent large alterations of profits and allows the purchasing staff to properly order replacement parts. See *e.g.* Bragg's Accounting Best Practices, page 240.

Additionally, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Peterson '522 /Green combination as taught by Gralla to expressly recite the features of Netscape. Such a modification would have simply disclosed that which is inherent. Furthermore, it is the Examiner's factual determination that accessing the inventory data quickly is a desired feature. And by using the Netscape's push technology, the user would be able to view the inventory data offline just in case there was an interruption in either the satellite or ground based Internet connection. In other words, by continuously pushing the data between server and client when a connection is present, the client will at the very least, have access to the latest data in the event the connection between the server and client is severed. As noted in Gralla on page 195 #7:

Because the information and pages are local instead of on the Internet they can be accessed when the user is not connected. They can also be accessed quickly because they're being read from a hard disk instead of across the Internet.

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19. Claims 1-3 and 5-16, 18, and 19, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Cornett et. al. (U.S. 5,216,612) (“Cornett”) in view of Gralla, Greene, and Chopra. Cornett directly discloses a database (Figure 1) storing on hand inventory [C15, L50-61] and/or [C32, L65-L69]; storing reserved stock inventory [C27, L65 to C28, L3]; ordered inventory [C15, L50-L61]; a communication interface (“engineering change control management subsystem”) which provides access to the database file system [C5, L63-66]; a server which provides real-time access to inventory information (“The parts manual file 7 is maintained in a central location”) [C14, L5-L14]; and a client can communicate with the server. Cornett does not directly disclose a wireless connection. Gralla teaches a wireless connection (e.g. satellite connection on pg 75-77) to as way to receive high speed Internet content; pushing web based content to user (Chapter 33, pp 190-197, with #2 on pg 192 an exemplary embodiment).

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Cornett as taught by Gralla to include a wireless web connection utilizing push technology. Such a modification would have allowed the users to view the information offline in case the satellite reception became poor or the electronic connection was lost or severed. Greene and Chopra (as discussed above) are cited in this rejection simply to show features of the inventory system in Cornett that are old and well known in the art.

20. The Examiner respectfully maintains his position that Applicant is not his own lexicographer. The Examiner maintains his position regarding the dictionary definitions provided in previous office actions.

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21. It is the Examiner's legal conclusion that conditional or optional phrases such as phrases which start with "can" in claim 1 or "when" in claim 12 are not limiting because language that suggest or makes optional but does not require steps to be performed does not limit the scope of a claim or claim limitation. In other words, as a matter of linguistic precision, optional elements do not narrow a claim because they can always be omitted.

22. In light of Applicant's amendments to the claimed, all claim rejections and/or objections not maintained in this Office Action are hereby withdrawn.

Response to Arguments

23. Applicant's arguments filed march 22, 2006 have been fully considered but they are not persuasive.

24. Regarding Applicant's discussion of 35 U.S.C. §112, 1st paragraph, Applicant's arguments seem to paraphrase the claim(s) at issue. Because Applicant's arguments are based upon paraphrasing and not the exact claim language, Applicant's arguments are not persuasive.

25. Regarding Applicant's discussion of anticipation, the Examiner respectfully disagrees. Regarding Applicant's discussion of *Standard Haven*, *In re Heck*, etc, the Examiner respectfully disagrees because Applicant's position is contradicted by MPEP §2123. Regarding Applicant's discussion of *In re Graves*, the Examiner respectfully disagrees. Regarding Applicant's discussion of extrinsic evidence, the Examiner maintains his position. Yet again and to be especially clear: *the Examiner is not relying on any extrinsic evidence.*

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26. It is the Examiner's position that except for a few limited circumstances, decisions of U.S. Federal District Courts are generally not binding precedent on the USPTO. This includes *Rockwell v. SDI* as cited by Applicant on page 10 of his remarks.

27. Regarding Applicant's discussion of obviousness, the Examiner respectfully disagrees. To be clear and to help Applicant draft his response, it is the Examiner's principle position that the claims are anticipated. However if a reviewing body finds that they are not anticipated, it is the Examiner's *alternative* position that they are obvious.

28. Regarding the obviousness rejections, the Examiner has carefully reviewed the provisional application 60/178,313 filed January 26, 2000 ("Provisional Application"). However because the Examiner can not locate support for all of the claimed subject matter in claims 1 and 12 in the Provisional Application, the effective U.S. filing date for claims 1-3 and 5-16, 18, and 19 (as currently amended), is hereby determined to be January 26, 2001. Even so, the Examiner respectfully asserts that if prior art references that do not qualify as prior art because they post date the claimed invention, the references may be relied upon to show the level of ordinary skill in the art at or around the time the invention was made. See MPEP §2141.03.

29. Regarding Applicant's discussion of 'question of fact' on page 12 of his remarks, the Examiner disagrees because it is unclear what Applicant is arguing.

30. Regarding Greene, the Examiner has reviewed the electronic file and has determined the Greene is present. It is assumed that Applicant has access to Greene via the Private PAIR system. If after accessing Private PAIR, Applicant still does not have access to Greene, Applicant should contact the Examiner in writing and the Examiner will provide a copy at that time. If Applicant has difficulty accessing Private PAIR, Applicant is respectfully directed to see

<http://pair-direct.uspto.gov>. Should Applicant have additional problems with the Private PAIR system, Applicant is respectfully requested to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

31. Regarding Applicant's arguments that Gralla teaching away from the claimed invention, the Examiner respectfully disagrees because Gralla teaches the use of 'push technology.'

32. Regarding lexicography, the Examiner respectfully maintains his position that Applicant is not his own lexicographer for the reasons previously stated. In particular, the Examiner respectfully disagrees that *Vitronics v Conceptronic* is on point. See MPEP §2111.01 I.

33. Regarding the affidavits, the Examiner respectfully maintains his position. To be clear, the Examiner has not "rejected" the affidavits as Applicant asserts. While the *claims* are rejected, the affidavits have been considered.

34. Regarding Applicant's statements on page 6 stating that Applicant "is also filing herewith a Pre-Appeals Conference Request and the accompanying brief in an effort to settle some of the outstanding issues in the instant application."¹ The Examiner has reviewed the record and (1) can not locate a Notice of Appeal, let alone an appeal brief; and (2) can not locate a Pre-Appeals Conference request.

Conclusion

35. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

¹ Applicant's Remarks filed March 22, 2006, page 6, ¶4.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. §1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

36. References considered pertinent to Applicant's disclosure are listed on form PTO-892. All references listed on form PTO-892 are cited in their entirety.

37. Unless expressly noted otherwise by the Examiner or other USPTO official, the following four (4) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action *and* any future office action(s), communication(s), or other correspondence provided by the USPTO: MPEP citations to Chapter 2300 are from the MPEP 8th Edition, Rev. 4, October 2005; citations to Chapters 200-900, 1200-1400, and 1700-1900, 2100, 2200, 2600 are from the MPEP 8th Edition, Rev. 3, August 2005. MPEP citations to Chapters 100, 1000, 1100, 1500, 2000, 2500, and 2700 are from the MPEP 8th Edition, Rev. 2, May 2004. MPEP citations to Chapters 1600, 2300, 2400 are from MPEP 8th Edition, August 2001.

38. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

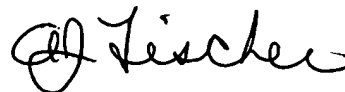
39. Also in accordance with *In re Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35, the Examiner finds that the reference Supply Chain Management, Strategy, Planning, and Operation, by Sunil Chopra and Peter Meindl ("Chopra") is additional evidence of what is general knowledge or common sense to one of ordinary skill in this art. The Examiner finds that Chopra provides a solid understanding of the analytical tools necessary to solve supply chain problems. The reference is cited in its entirety. Additionally, because Chopra targets both academics and practitioners and is self described as "a suitable reference for both concepts as well as methodology for practitioners in consulting as well as industry,"² because at least one of the textbook's goals is to provide knowledge of logistics and supply chain methodologies, and because "[w]ell known text books in English are obvious research materials." *In re Howarth*, 654, F.2d 103, 210 USPQ 689, 692 (CCPA 1981), the Examiner finds that Chopra contains obvious research material. Because Chopra contains obvious research material and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that Chopra is primarily directed towards those of low skill in this art. Because Chopra is directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within Chopra.

40. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding

² Chopra, pp xv-xvi.

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claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. The Examiner respectfully notes and thanks Applicant for his “Remarks/Arguments” (beginning on page 6) traversing the Examiner’s positions on various points. As always, if Applicant disagrees with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,³ the Examiner respectfully reminds Applicant to properly traverse the Examiner’s position(s) in accordance with 37 C.F.R. §1.111(b) in his next properly filed response. By addressing these issues now, matters where the Examiner and Applicant agree can be eliminated allowing the Examiner and Applicant to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicant has any questions regarding the Examiner’s positions or has other questions regarding this communication or even previous communications, Applicant is strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (571) 272-6779. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner’s immediate supervisor, Alexander Kalinowski, can be reached at (571) 272-6771. The fax number for facsimile responses is now (571) 273-8300.



Andrew J. Fischer
Primary Examiner
Art Unit 3627

AJF
April 10, 2006

³ *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner’s implied position that the references are analogous art.